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NO.

Supreme Court, U.S.
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CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

JANUARY TERM, 1991

ILSE HEINEMEYER, EXECUTRIX OF THE
ESTATE OF FRANK GRUND
Petitioner

versus

JOSEPH P. O"DONNELL
Respondent

PETITION FOR WRIT OF CERTIORARI TO
UNITED STATES COURT OF APPEALS FOR
THE SUPREME COURT OF NEW JERSEY

PETITION FOR WRIT OF CERTIORARI

Ilse Heinemeyer,
Pro Se
1380 Terrill Rd.
Scotch Plains,N.J.
07076
(908) 322-1788

QUESTIONS PRESENTED

1. Whether the Lieberman v Employees Inc. of Wausau was in fact a case in point in establishing the defendent respondent's outrageous irresponsible conduct as the proximate cause of damages in the underlying Medical Malpractice case.

2. Whether the presiding Judge should have instructed the Jury that the first issue in the case was to determine whether there was negligence on the part of the attorney Joseph P. O'Donnell and not to consider the underlying Medical Malpractice case at all.

3. Whether video depositions of the defendant doctors in the underlying malpractice case should have been allowed.

4. Whether my constitutional rights were violated when the Court prejudiced the Jury by not allowing the letter from the Legal Ethics investigator into evidence, The letter stated the case was dismissed with prejudice, no one protected petitioner's rights.

5. Whether the Court violated petitioner's right to appeal from the last moving paper of the Trial Court, which was denied by that court since it was done pro se.

6. Whether the Court had the right to instruct the Jury to put me in the position of the attorney for comparative negligence in the legal malpractice case.

7. Whether Chief Justice Robert N. Wilentz was prejudiced in denying my Legal Ethics appeals and legal malpractice appeals in the Supreme Court of New Jersey.

8. Whether the attornies and the presiding Judge were intimidated by Chief Justice's ruling in the Legal Ethics Complaint.

9. Whether the Court violated Ilse Heinemeyer's right to appear pro se in a legal malpractice case resulting from the blatantly irresponsible acts and negligence of an attorney.

10. Whether the Legal Ethics Committee should be ordered to reopen the O'Donnell case since petitioner supplied them with documents which surfaced during discovery.

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IN THE SUPREME COURT OF THE UNITED STATES

JANUARY TERM, 1991

ILSE HEINEMEYER, EXECUTRIX OF THE ESTATE OF FRANK GRUND, Petitioner

v.

JOSEPH P. O'DONNELL, Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES SUPREME COURT FOR THE SUPREME COURT OF NEW JERSEY

To: The COURT OF APPEALS

The petitioner, ILSE HEINEMEYER, respectfully prays that a writ of certiorari issue to review the Judgment of the Supreme Court of New Jersey entered on October 30, 1990.

OPINION BELOW

On October 30, 1990 The Supreme Court of New Jersey for the Appellate Division entered its order denying a motion for reconsideration on a Petition for Certification of a judgement in favor of the defendant-

respondent,, attached hereto as Appendix A.

JURISDICTION

On January 25, 1990, the New Jersey State Superior Court, Appellate Division entered an order dening my right to appeal from my last moving paper with the Trial Court dated October 13, 1989. A copy of this order is attached as Appendix B.

On March 1, 1990, the Superior Court of N.J. Appellate Division denied a Motion for Reconsideration. Said order is attached as Appendix C.

On July 10, 1990. The Supreme Court of New Jersey on Petition for Certification ordered the petition for cer ification denied, with costs. Attached as Appendix D.

Recondideration of Petition for Certification is Appendix A.

CONSTITUTIONAL PROVISIONS INVOLVED

The United States Constitution, Amendment Fourteen:

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property. without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Article Four:

Section 1. Full faith and credit shall be given in each State in the public Act Records and Judicial proceeding of every other state.

Section 2. (1) The çitizens of each state shall be entitle to all privileges of the several States.

Article Six:

(2) This Constitution, and the laws of the United States, shall be the Supreme Law of the Land and the Judges in every State shall be bound thereby, and anything in the Constitution or Laws of any State to the Contrary notwithstanding.

Title 42, United States Code § 1981. Equal rights under the law: "All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons."

Title 42,United States Code § 1983. Civil Action for deprivation of rights: "Every person who, under color of any statute, ordinance, regulation, custom, or usage of any State or Territory, subjects or causes to be subjected,any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

STATEMENT OF THE CASE

After Ilse Heinemeyer, Daughter and Executrix of the Estate of Frank Grund filed a pro se medical malpractice action against Overlook Hospital and four physicians. The medical defendant moved to dismiss the action based on the fact that she could not represent the Plaintiff Estate pro se because she was not the only heir. The Court gave her time to obtain an attorney to represent the Plaintiffs, and she contacted the Defendant, Joseph P. O'Donnell, and met with him on Nov. 1, 1982. He requested the complete file be left with him, this included all the medical records, and medical research.

Knowing the Court would sign an order to dismiss the case unless an attorney made an appearance on her behalf Before Jan. 8, 1983, (Judge Griffin, J.S.C. extended the time from Dec. 1, 1982 to Jan. 8, 1983.) Mr. O'Donnell did not notify her until Jan. 12, 1983, by phone he would not represent her and the Judge signed the order dismissing the case. On Jan. 14, 1983 he wrote a letter to her and she received the records on Jan. 20,

1983. He had the complete file for two and a half months. he sat on the file.

In Mr. Taylor's Opening statement he used the Ethics case (June 14, 1989, T 41:14-25) "Three days after her case was dismissed Mr. Heinemeyer files an ethics complaint against Mr.O'Donnell, and prusues that ethics complaint all the way up to the Supreme Court of New Jersey, who upheld the lower ethics committee report which said there was nothing unethical or nothing improper in any way that Mr. O'Donnell did with this case. The Supreme Court of New Jersey refused to hear her appeal. And that decision became final". That was used in Mr. O'Donnell defense.

The Court instructed the Jury, (June 14, 1989,T 45:2-15)"Whether he behaved in accordance with the code of ethics or behaved in accordance with the practice in the legal profession are really two different things".

Obviously the Court and Petitioner's attorney were intimidated and capitulated by Chief Justice Robert N. Wilentz's Ethics decision. (On June 15,1989 T 101:19-25 The Court: "Counsel,I see you fishing for more

papers. We are not going to try an Ethics complaint here". Mr. Augenstein: " I understand that, your Honor, I thought that was the Complaint, the letter she wrote to the Ethics Committee. I guess I was wrong, for I was going to introduce that, your Honor". (T 102:1-2) The Court: "No. Next question". Mr. Augenstein: "Okay".

That letter written to the Ethics Office on January 15, 1983, by me was a true statement of fact, well proven by my phone statement and phone bills of Mr. O'Donnell which had to be requested from the phone Company. He refused to give us his phone record.

Much discussion about the Ethics report being entered into evidence took place, and was concluded with Mr. Augenstein backing off again. (June 15, 1989, T 114:3-11) Mr. Augenstein "I didn't want the Ethics Committee file in. I didn't want the letter in. I didn't want to touch any part of it. I didn't want any part of it. I thought it was terrible for the case. And she insisted that she wanted it in. I

can only advise her so far". The Court: "All right. I've taken you off the hook. It's my ruling that it is not admissible for reasons I've already put on the record". After all the discussion the Court finaly admitted(June 15,1989, T 115:3-4) "I do note admissions in there that would qualify as a plaintiff's exhibit". That report was important to my case, along with the documentation that surfaced during discovery which proves legal malpractice. (T 117:16-19) The Court: "My ruling incidentally is we're going to try two cases, I quess legal malpractice and a medical malpractice case. We're not going to try the Ethics Committee's case, too".

The Ethics file and investigator's report and this legal malpractice cannot be separated, they are essentially one. After Petitioner received the report Mr. Kenneth J. Duane, dated Nov. 14, 1983, she immediately called and wrote a letter appealing this blatantly outrageous decision. He told Mr. Duane Overlook Hospital was not mentioned in the complaint, he stated the statute of limitation had run against the defendant doctors, he stated he met

with Mrs. Heinemeyer more than once. He also stated "he contacted a hospital administrator, Dr. Arthur Kaufman who concurred with Dr. Kravis that there was no evidence of medical malpractice". and the respondant indicated that on or about January 8, 1983 he called Judge Griffin and told him that he would not be taking the case. Mr. Duane further wrote "The matter finally consummated in the case being dismissed with Prejudice by the Court in accordance with the earlier Order". He also wrote in this report"Due to the respondent's friendship and professional association with Steven Bladder, I feel that he kept the file and continued to pursue the determination of a cause of action perhaps longer than was warranted".

The Court would not allow this report into evidence. Mr. O'Donnell just plainlied to the Ethics Committee. Overlook Hospital was named a defendant, in the Medical Malpractice complaint, The statute of limitation had not run against the four defendant doctors.

Steven Bladder was an attorney's name

that I got from the Public Advocates's office, who gave me Mr. O'Donnell's name as an attorney interested in persuing an age discrimination and medical malpractice case. The appeal was dismissed on November 12, 1983, Witness, the Honorable Robert N. Wilentz, Chief Justice of Supreme Court of N.J., for Legal Ethics.

Of course Mr. O'Donnell did not realize I would sue him for legal malpractice, so he had to continue to cover up.

On August 6, 1986 respondent produced a letter which is in part illegible written to Mr. Duane by Mr. O'Donnell dated August 19, 1983. He wrote "I enclose herewith a copy of Mr. Kravis' letter to me on Ilse Heinemeyer. I asked him to speak to you directly, but he will not get involved in doing so. I also enclose herewith Maria Marinari Sypek's memo at the time of Kravis' review along with a copy of my Boardwalk Seminar Brochure, which captures my relationship with Kravis and Kaufman". I still

have not received the Boardwalk Seminar Brochure. These documents are not part of the Ethics file.

The ethics file cover letter indicated thirty-two pages were in the file. There were only twenty-nine pages in the file petitioner's attorney received from Mr. Taylor. On October 15, 1989 I received the ethics file from David E. Johnson, Jr. Director of Attorney Ethics. Twenty one pages were in that file. During discovery several letters were submitted by the respondent which were represented by him and his attorney Mr. Taylor as part of the ethics file.

On June 20, 1989, (T-77:13-17) Mr. Augenstein: "Well, your Honor, I had indicated I think from the beginning that I would have rather prepared and proceeded with the case, with medical malpractice case with, and then the legal malpractice case". (T 77:24-25, T 78: 7-9) Mr. Taylor: However will your Honor be presenting the issue on the plaintiff's comparativenegligence on legal malpractice?" With your approval, any medical malpractice, or medical malpractice,

mainly goes to medical malpractice".

The Court (T 78: 10-23) Well, that's one of the reasons I suggested it in this manner. Let me put them on the record. I'm not aware of any, defense said no. The Court said, any objection. He said no. And it's a trial that has, and a resulting from Appellate level, in this type of procedure, but I've already cited cases which says that we don't have to handle these cases with any--within a format, and I, so let me indicate the reasons why we're proceeding with this type of procedure in this manner, which I believe is best.

First of all, the medical issues are much more numerous, and much more complicated than the issues in legal malpractice case".

The only case the Judge mentioned is the Lieberman case, which was not a case in point, that was a case that the insurer maintains the right to control defense of a case, but only to the extent of its obligation under the insurance policy, limited to the issue of damages.

In this case Mr. O'Donnell's defense was, there was no medical malpractice case. That he could not get a medical expert to testify. Therefore medical malpractice must be first.

Mr. O'Donnell had the complete file for over two and a half months. He knew about the broken back, no informed consent, early discharge from hospital without oxygen and pain and suffering. (Of course my two medical experts came in with other issues of medical malpractice, yet he could not find a medical expert to testify.) He had the Chest Xray Pa and Lateral views 2/8/80, no broken back, Abdomen: Abdomen shows the presence of several loops of small bowel distended with gas in the abdomen. There is however, no evidence of obstruction. The findings may be consistent with ileus No gross organomegaly is noted."

The same thorough type Xray Pa and Lateral view 2/19/80 Chest, a seperate paragraph stated "There is a compression fracture of the midthoracic vertebral body". The decedent walked into the hospital, after the broken back unable to walk.

On 2/29/80 a Chest Xray clearly states in the last sentence. "The osseous strictures are normal for the Patient's age".

As to no informed consent, the argument was a general admittance form signed by me was acceptable for all invasive treatments by any and all plysicians.

I discovered my Father, the decedent's broken back after his death, several months after I got the complete medical record file. The nurses reports indicated a fall on February 15, 1989.

He also had the two cases in point, Winters v. The City of Jersey City 120 N.J. Super 27 (App. Div. 1986) and Tierney v. St Michael's Hospital, 214 N.J. Super 27 (App. Dov. 1986). Yet he stated to the Ethics He could not find a medical expert, the case had not merit and I did not sue the hospital and the statue of limitation had run,

Yet the Court:(6/20/89 T 82:11-25,83:1-9) "So I have a serious question as to

whether the issue of medical malpractice should be submitted to this Jury, if they do find liability on the legal malpractice cause of action. The question I propose to Mr. Augenstein for discussion with Mrs. Heinemeyer is whether she wants to move for mistrial on the medical malpractice aspect of it, try the issue before another Jury if liability is found on the legal malpractice aspect of it.

Now, if she does, and if I grant that motion, how the chips fall is something I'm about to decide, whether costs will be awarded the defendant, and that type of thing. But I think Mrs. Heinemeyer has to consider, first of all, Mr. Augenstein is that if she wants to go through the trouble and expense of bringing the medical proofs again in another suit before another Jury, so whereas I can see her perhaps wishing to request a mistrial and a severance of the medical malpractice

case from a legal standpoint, from the practical standpoint, considering the time and expense involved in this case, which now really goes back nine years already, what it's worth at all, I don't Know".

The Court instructed the Jury (6/20, T 87:4-13) "However, you will not be deliberating on all aspects of the case, initially we had decided that we will submit to you, first of all, issue of legal malpractice, this is, whether Mr. O'Donnell was guilty of negligence in considering this matter and advising Mrs. Heinemeyer as the Executrix of the Estate. If you find that the plaintiff has failed to prove negligence on the part of Mr. O'Donnell as a negligence as an attorney, that's the end of the case." (T 88: 22-25) "So at this point, therefore, we do want you to block out of your mind any consideration of whether or not there's a medical malpractice case involved".

On June 20,1989 The Court instructed the Jury (T136: 8-18)" I do point out to you that this part of the case is lumped to the question of the issue of legal malpractice, and therefore, whether or not their defendant--strike that. Whether or not the plaintiff has a valid cause of action for medical malpractice is not to be considered by you at this time, regardless of that, you determine whether there was negligence on the part of the defendant, which caused her to lose her opportunity to prove that medical malpractice case, in the Court, that's the issue in this part of the case." malpractice case, in the Court, that's the issue in this part of the case". (June 20, 1989, T136:25, T137: 1-5)"So first thing, first determine whether or not,in fact, there was any negligence on the part of the defendant-attorney which was a proximate cause of her losing the opportunity to prove cause of action".

The Court ultimately made me a defendant in the legal malpractice case. (June 20, 1989 T 133:16-25, T 134:1) "No. 2, which reads as follows: "Was

Plaintiff, Ilse Heinemeyer, Negligent, which negligence was a proximate cause of the damage to the plaintiff? And that simply involves whether or not the defendant by a fair preponderance of the credible evidence has satisfied that Mrs. Heinemeyer was also negligent to some degree, then that negligence contributed to the loss of the medical malpractice case". (T:134 - T:136) goes on to instruct the Jury about comparative negligence in the loss of the cause of action for medical malpractice, and assess the degree of negligence each is responsible for.

The Trial Court admitted I was a Plaintiff in the complaint, Therefore, I had every right to appeal pro se, to the Trial Court.

The Court was blatantly prejudicial with the instructions to the Jury. The decision was in favor of the respondent. The order was signed on July 6, 1989 dismissing the case with prejudice.

The factual situation is well documented and pursued timely by a post verdict application to the Trial Court filed pro se Filed July 11, The Order For Judgment was signed by A. Donald McKrnzie,J.S.C. of the Trial Court on July 6th, 1989.

On June 23,1989, I wrote a letter to Edward W. Beglin, Jr. A.J.S.C. asking for a stay of judgement until an investigation could be conducted. On June 27, 1989 he answered the letter, second paragraph,"I am sending a copy of your letter along with my reply to Judge McKenzie so that your position will be known to him should there be any Post-verdict applications made in that regard".

On July 10, 1989 I wrote the Office of attorney Ethics, asking for an investigation of Mr. O'Donnell's creative explanations that did not coincide with the documented evidence which surfaced during discovery, which was not enclosed with the Ethics file, yet represented as part of their file. A copy was sent to the trial court by me with enclosures.

A motion for a new trial was filed by me on July 11, 1989 with an order, as instructed by the Court Clerk. Motion was"denied without prejudice due to movant's lack of standing as an attorney to represent Plaintiff". Appendix E. This was dated Aug.4, 1989.

Since Mr. Taylor wrote a letter to the Court on July 28, 1989 , attacking my credibility, I immediately wrote a Letter dated July 31, 1989, with suporting documents for my appeal.

After the Post Verdict Application was denied, on August 7, 1980 I wrote to the Trial Judge with a legal argument with supporting documents why I should be allowed to appeal pro se. This was ignored.

On Sept 28, 1989 I filed a Motion to set aside decision of A. Donald McKenzie J.S.C. allowing Ilse Heinemeyer to represent Plaintiff Frank Grund and Ilse Heinemeyer Pro Se.The same order as Appendix E. In pen the date 13th day of October, 1989 was filled in. The order was stamped "Motion denied for reasons set forth on the record".

In response to Petitioner's Petition for Certification received from Mr. Thomas J. Taylor,(dated April 3, 1990) attorney for Mr. O'Donnell, the respondent, a Notice of Motion for an extension of time was filed. Mr. Taylor to protect himself wrote, "Counsel will rely, in part, on the attached Certification.

1. I am an attorney at law of the State of New Jersey, an associate of the law firm of Siegel & Siegal and have been entrusted with the defense of the Respondent, Joseph P. O'Donnell in the within matter".

A very important part of Dr. Bayer's testimony as medical expert in the medical malpractice case was not received by me. Mr Taylor accused him of accusing Dr. Lintz as being part of a cardiology group and he threatened him verbally and unjustly, which prejudiced the Jury. The date of the transcript was June 16, 1989 the page ended very abruptly,(T 125: 22-25) Dr. Bayer

"Right, but I think--"

The Court: "Looks like a good time to make the switch. WE have another reporter".

(Whereby the testimony was taken over by another Court Reporter.)

(The matter was concluded)

Mr. Taylor addressed the Court stating there was no medical malpractice case. (June 20, 1989, T 95:22-25)"And then you're going to get some documents to look at in the Jury Room. And I Submit to you these documents are consistent with the testimony of Mr. O'Donnell completely". Of course they were, he wrote them. They were a hand written note and hand written memo. He could not make out his own handwriting on both and one was signed by someone else, he could not make out that signature. Both were self serving writings stating there was no medical malpractice. They were not dated, one was on a steno pad and the other on legal paper.

They were marked as plaintiff Evidence, which I find incredible, since the Legal Ethics Report was not allowed in. Appendix E's Order will explain what should have been pursued in this case, what I wanted done.

Clearly the four physicians and Overlook Hospital looked over the Xrays and reports, yet I was never told of the decedent's broken back. This fact was concealed by them and caused my father additional pain and suffering. The records also show no care was given to this.

I ordered the complete transcript of the five day trial and a copy of it was sent to the Appellate Division. It is still there, but not filed since my appeal was denied.

REASONS FOR GRANTING THE WRIT

1. LIEBERMAN v EMPLOYEES INSURANCE OF WAUSAU SHOULD NOT HAVE BEEN REFERRED TO AS A CASE IN POINT.

2. LEGAL ETHICS AND LEGAL MALPRACTICE CANNOT BE SEPARATED IN TRYING A LEGAL MALPRACTICE CASE THAT INVOLVES BOTH ISSUES.

3. RULE GOVERNING THE COURTS OF THE STATE OF NEW JERSEY RULE 1:21-1., Appearance in Court.

The Trial Court referred to LIEBERMAN v EMPLOYEES INSURANCE OF WAUSAU 171 N.J.. Super, 83,394 A2d 172 (Law Div. 1978), that was not a case in point, in that case the insurer maintained the right to control the defense of a case, but only to the extend of its obligation under the insurance policy, limited to the issue of damages. The issue of liability and damages was critical to the underlying medical malpractice. Mr. O'Donnell violated his fiduciary duty to me by allowing the medical malpractice case to

be dismissed while he had the complete file. Liability in the medical malpractice case was not given to the Jury. They were charged to deliberate on Legal only, and to block out the medical malpractice issues completely. Mr. O'Donnell had the complete medical records for two and a half months. His defense was,there was no medical malpractice case, he was waiting for a second medical opinion.

Mr. O'Donnell had my compete file because the Court ruled I could not represent an estate in the underlying medical malpractice case I filed pro se.

Under Rules Governing the Courts of the State of New Jersey Rule 1:21-1. Who may Practice: Appearange in Court (a) Second Paragraph, A person not qualifing to practice pursuant to first paragraph of this rule shall nonetheless be permitted to appear and prosecute or defend an action in any court of this state if the person (1) is a real party of interest to the action or guardian of the party. Petitioner, Ilse Heinemeyer,

is a party of interest, a plaintiff, and it was proven in court by the defendant's Doctors video testimony that I was a guardian. There is no evidence of record to indicate pecuniary damages. This was not indicated on the medical malpractice complaint. But for this ruling there would be no Legal malpractice case.

Mr. O'Donnell also used the Ethics Committee clearing him of any wrong doing. The report clearly stated the case was"dismissed with prejudice."

Mr. O'Donnell stated There was no Attorney Client relationship with me, only with the Estate. Under the Survival Act I was Frank Grund, the decedent, and also a plaintiff. The two cannot be separated.

In re Loring, 73, N.J. 282 (1977), #5. The attorney-client relationship embodies the concept of the client's trust in his fiduciary, the attorney; inherest in that trust is duty to advise the client fully, frankly and truthfully of all material and significant information. He did not.

#7. A failure of attorney to communicate adequately with client justifies reprimand.

In Stockton v. Ford 52 U.S. (11 How) 232, 247, 13 L. Ed. 676 (1850) Describes the attorney-client relationship embodies the concept of the client's trust in his fiduciary, the attorney.

In Tormo v. Yormark 398 F. Supp. 1159 D.C. N.J.(1975) Law of New Jersey imposes duties incident to an attorney-client relationship on one who merely assumes to give legal advice and council, and neither contractural formality nor compensation or expectation of compensation is required. 98 N.J. L.J. 66 Law Rev. (1974) Attorney- ethics and discipline - standard of conduct required in business transactions even in absence of attorney-client relationship.

In Kriegsman v Kriegsman 150 N.J. Super 474 An attorney has certain obligations and duties to a client once representation is undertaken, and his obligation in that respect do no evaporate because case become more complicated and work more arduour or retainer not as profitable as first comtemplated or imagined.

There was a blatant violation of the Rules of Professional Conduct. Mr. O'Donnell lied to the Ethics Committee, he was a former presenter to that committee. With reference to RPC 3.3 Candor Toward The Tribunal (a) a lawyer shall not knowingly: (1) make a false statement of material fact or law to a tribunal. He did both to Ethics and to the Court. Also RPC 1.1 Competence A lawyer shall not: (a) Handle or neglect a matter entrusted to the lawyer in such manner that the lawyer's conduct constitutes gross negligence. (b) Exhibit a pattern of negligence or neglect in the lawyers handling of legal matters generally. The Ethics situation and the legal malpractice must go hand in hand, cannot be separated. RPC 8.4 Misconduct. It is Professional misconduct for a lawyerto: (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or through the acts of another. (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation; (d) engage in conduct that is prejudicial to the administration of justice.

With reference to RPC 1.16 Declining of termination representation (d) Upon termination of representation, a lawyer shall take steps to the extent reasonable practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employemnt of other counsel, surrendering papers and property to which client is entitled.

If there was no medical malpractice there would be no legal malpractice, so no matter what the creative leagaleeze rational was in the trial court this is an extreme injustice. Since it was a Jury trial, in order to appeal this case I followed The State of New Jersey Rules R:2:10-1. Motion for Jury Verdict Review: Standard of Review- In both civil and criminal actions, the issue of whether a jury verdict was against the weight of the evidence shall not be cognizable on appeal unless the motion for a new trial on that ground was made in the trial court. The trial court's ruling on such a motion shall not be reversed unless it clearly appears that there was a miscarriage of justice under the law.

This was "denied without prejudice due to movant's lack of standing as an attorney to represent plaintiff". I appealed that decision with evidence, again the trial court denied that application on October 13, 1989, that became the final judgement of an appeal to the Trial Court. That was the last moving paper I appealed from. These decisions are questioned, since I am a plaintiff to this action.

In the matter of Kasharian v Wilentz, 93 N.J. Super 479 (App. Div. 1967) the Appellate Division allowed plaintiff time to obtain an attorney. This was what the court held to in this case. Instead of helping the medical malpractice case, The negligence of an attorney, lost my case and created a Legal Malpractice case. There were no pecuniary damages in this case, and certainly no liabilities, as implied by Mr. O'Donnell in Court, since the medical malpractice case was a valid one. I had two qualified medical experts testify and the medical records speak for themselves.

Mr. Michael Blacker, the legal expert for Mr. O'Donnell (June 16, 1989 T 77:8-12) Q."There was an attorney/client relationahip between Mrs. Heinemeyer and Mr. O'Donnell; wasn't there?"A. "Yes" In his deposition of Oct.4, 1988(T69: 10-11) Q."Was the case limited to $10,000 recovery? A. "No". In Mr. Blacker initial report on June 28, 1988 on page five paragraph three, fourth sentence, "This report will be limited to proximate cause questions regarding the dismissal of the claim and will not deal at all with the underlying medical malpractice case. I recognize that plaintiff must prove the underlying medical malpractice case to prevail". Yet the Court did nothing to protect the only case I wanted to persue.

Since the cost is so prohibitive in persuing a valid case when an old person in involved the standards are not the same. with plysicians,lawyers and now the court. This is of great concern to everyone.

CONCLUSION

Mr. O'Donnell created the legal malpractice situation. By covering up his unethical conduct with the Ethics Committee, clearly he violated his fiduciary duty to Ilse Heinemeyer and by not advising her fully, which constituted actionable Legal Malpractice for all damages resulting therefrom, including the underlying Medical Malpractice case. He did nothing to protect the case. Nothing is acceptable that would put the Medical Malpractice case in jeopardy.

To permit this legal malpractice case to be dismissed without an impartial review would be a violation of all petitioner's Constitution and Human rights to herself and to the Survival Statute.

For the foregoing reason, petitioner respectfully submits that the petition for a writ of certiorari should be granted.

Dated 1-24-91

Respectfully submitted

Ilse Heinemeyer

Ilse Heinemeyer, Pro Se
Petitioner

SUPREME COURT OF NEW JERSEY
M-298 September Term 1990

31,713

ILSE HEINEMEYER, et al.,

Plantiffs-Movants,

vs.

ORDER

JOSEPH P. O'DONNELL,

Defendant-Respondent.

Filed Nov. 1, 1990

BY; Stephen Towsend
Clerk

This matter having been duly presented to the Court, it is ORDERED that the motion for reconsideration is dēnied.

WITNESS, the Honorable Robert N. Wilentz Chief Justice, at Trenton, on this 30th day of October, 1990.

Stephen Townsend
Clerk of the Supreme Court

I hereby certify the foregoing
is a true copy of the original
on file in my office.

Stephen Townsend
CLERK OF THE SUPREME COURT
OF NEW JERSEY

ORDER ON MOTION

SUPERIOR COURT OF N.J.
APPELLATE DIVISION
DOCKET NO. A-1964-89T3
MOTION NO. M-2265-89
BEFORE PART: F
JUDGE (S): COLEMAN

ILSE HEINEMEYER etc.
v
JOSEPH P. O'DONNELL

Rec'd
Appellate Division
Jan 29 1990
R. Emilie Cox
Clerk

Filed
Appellate Division
Jan 29 1990
R. Emilie Cox
Clerk

MOTION FILED: NOVEMBER 13, 1989

SUBMITTED TO COURT: JANUARY 24, 1990

O R D E R

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS ON THIS 25th DAY OF JANUARY, 1990, HEREBY ORDERED AS FOLLOWS:

MOTION BY APPELLANT ILSE HEINEMEYER FOR LEAVE TO FILE NOTICE OF APPEAL NUNC PRO TUNC AND/OR FOR FURTHER RELIEF	Denied	X
	Other	X

Supplemental:

The time to appeal expired on August 22, 1989 R. 2:4-4(a) permits only a 30 day extension which expired on September 22, 1989. Your application, which was not filed until November 13, 1989, was more than 45 days out of time.

This appeal is dismissed.

FOR THE COURT:

/s/ JAMES H. COLEMAN, JR., P.J.A.D.

ORDER ON MOTION

Superior Court of N. J.
Appellate Division
Docket No. A-1964-89T3
Motion No. M-3038-89
BEFORE PART: F
JUDGE (S): Coleman

ILSE HEINEMEYER et al

v.

JOSEPH P.O'Donnell

Rec'd
Appellate Division
Mar 5 1990
R Emilie Cox
Clerk

Motion Filed: February 8, 1990

Submitted to Court: February 28, 1990

O R D E R

This matter having been duly presented to the Court, IT IS ON THIS 1st DAY OF MARCH, 1990, HEREBY ORDERED AS FOLLOWS:

MOTION BY APPELLANT ILSE HEIENMEYER, FOR RECONSIDERATION — DENIED X

SUPPLEMENTAL:

Filed
Appellate Division
MAR 5 1990
R Emilie Cox
Clerk

FOR THE COURT:

JAMES H. COLEMAN P.J.A.D.

SUPREME COURT OF NEW JERSEY
C-1054 September Term
1989

31, 713

ILSE HEINEMEYER, et al.,
Plaintiffs-Petitioners, ON PETITION
vs. FOR CERTIFICATION
Joseph P. O'Donnell
Defendant - Respondent

Filed
July 12, 1990
Stephen Townsend
Clerk

To the Appellate Division, Superior Court,

A petition for certification of the Judgement in A-1964-89T3 having been submitted to this Court, and the Court having considered the same;

It is ordered that the petition for certification is denied, with costs.

WITNESS, The honorable Robert N. Wilentz, Chief Justice, at Trenton, this 10th day of July, 1990.

Stephen Townsend
Clerk of the Supreme Court

I hereby certify the foregoing
is a true copy of the original
on file in my office.
Stephen Townsend
CLERK OF THE SUPREME COURT
OF NEW JERSEY

Ilse Heinemeyer
1380 Terrill Rd.
Scotch Plains,N.J. 07076
(908) 322-1788

FILED
Aug. 4, 1989

Ilse Heinemeyer, Executrix of the Estate of Frank Grund Plaintiff vs. Joseph P. O'Donnell Defendant	SUPERION COURT OF NEW JERSEY LAW DIVISION DOCKET No. L-087676-84 CIVIL ACTION ORDER

it is on this 4th day of August 1989 on motion of Plaintiff, Ilse Heinemeyer, for good cause shown:

ORDERED that the Defendant's Order of judgement be set aside; and it is further

ORDERED the Court rule for a new trial, Medical Malpractice first and than Legal Malpractice, in the interest of justice.

ORDERED that the complete Ethics File (represented as their complete file) be accepted as evidence, the documents sent by the Ethics Committee to Defendant and to Plaintiff. Also all documents referred to or implied in correspondence relating to that issue, yet not sent by the Ethics Committee as part of the O'Donnell file.

ORDERED to subpoena Marie Sypek, Dr. Kravis and Dr. Kaufman for testimony. Also the individual who signed the O'Donnell memo.

ORDERED that the Defendant produce an original copy of his office memo, the summary and the office note, Boardwalk Seminar Brochure, and original of all of Mr. O'Donnell's correspondence referred to as having been sent to the Ethics Committee.

ORDERED the Court protect my rights to appeal this blatantly outrageous situation in the interest of justice.

A. Donald McKenzie,J.S.C.

- In pen the 4th and August was filled in. The whole order was crossed was crossed out in pen.

In Pen was written "Motion denied without prejudice due to movant's lack of standing as an attorney to represent plaintiff". -

On Sept. 28, 1989 , I filed a motion to set aside decision of the Court, allowing Her to go Pro Se. The same Order was sent. - In pen date 13th-day of Oct.1989 and order was stamped "Motion denied for reasons set forth on the record".

Supreme Court, U.S.
FILED
MAR 29 1991
OFFICE OF THE CLERK

(2)

SIEGEL & SIEGEL
The Office Center @ Princeton Meadows
Suite 1-F, Plainsboro Road
Plainsboro, New Jersey 08536
(609) 799-6066
Attys. for Respondent
Our file: Misc. 15

SUPREME COURT OF THE UNITED STATES

January Term 1991

No.: 90-1215

ILSE HEINEMEYER, Executrix of the Estate of Frank Grund,

Petitioner,

vs.

JOSEPH P. O'DONNELL,

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITIONER'S PETITION FOR WRIT OF CERTIORARI

On The Brief:

Seymour E. Siegel, Esq.

Dated: March 27, 1991

BEST AVAILABLE COPY

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II. List of Parties

Ilse Heinemeyer, Executrix of the Estate of Frank Grund, deceased,

Petitioner,

v.

Joseph P. O'Donnell, Esq., a Member of the Bar of the State of New Jersey,

Respondent.

Opinions as Below

See Procedural History 1-3

PROCEDURAL HISTORY

The underlying legal malpractice case was tried for approximately seven days. The jury being charged and presented with the sole issue of defendant's professional negligence returned a verdict of "no cause of action." On July 6, 1989, the trial judge, the Honorable A. Donald McKenzie, entered an Order dismissing the case, with prejudice. It should be noted that the Estate of Frank Grund was represented at trial by Wayne Augustine, Esquire, a member of the Bar of the State of New Jersey.

Thereafter, the Petitioner herein, Ilse Heinemeyer, Executrix of the Estate of Frank Grund, made two pro se applications for post judgment relief and/or a new trial, each of which were denied.

On November 13, 1988, Mrs. Heinemeyer, pro se, filed a Motion with the Superior Court of New Jersey, Appellate Division, "For Leave To File Notice of Appeal and/or For Further Relief." This Motion was denied and the Appeal dismissed as untimely by the Court's Order of January 25, 1990. Thereafter on February 8, 1990, the Petitioner, again pro se, filed a Motion for Reconsideration which was denied on March 1, 1990.

On July 1, 1990, Mrs. Heinemeyer, again attempting to proceed pro se, filed a Petition for Certification before the New Jersey Supreme Court, which was denied on July 10, 1990.

A Motion for Reconsideration filed November 1, 1990 was denied by Order dated October 30, 1990.

On or about January 28, 1990, Petitioner filed her Petition for Writ of

Certiorari to the Supreme Court of the United States.

JURISDICTION

DOES THIS COURT HAVE JURISDICTION TO HEAR THIS PETITION?

The jurisdiction of the Supreme Court to review decisions of the State Courts is codified in 28 U.S.C. § 1257, which reads as follows:

"Final judgments or decrees rendered by the highest court of a State in whch a decision could be had, may be reviewed by the Supreme Court as follows:

"(1) By appeal, where is drawn in question the validity of a treaty or statute of the United States and the decision is against its validity.

(2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.

(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or

statutes of, or commission held or authority exercised under, the United States."

All of the issues raised by Petitioner are ones of state law thus as Justice Brennan stated, such judgments "... not only cannot be overturned by, [but] indeed are not even reviewable by, the Supreme Court of the United States." Justice Brennan, State Constitutions And The Protection of Individual Rights. 90 Harv. L. Rev. 489, 501 (1977).

Petitioner raises issues with reference to Lieberman v. Employers Insurance of Wausau 171 NJ Super. 39, (App. Div. 1979); the order in which the various issues were presented to the jury; the propriety of video tape testimony (specifically sanctioned by N.J. Ct. Rule 4:14-8(e); the jury charge with reference to plaintiff's comparative negligence (of which none was found); the

alleged prejudice of Chief Justice Robert N. Wilentz, in denying the appeals from the case Sub Judice as well as the prior ethics complaint (for which there is not a scintilla of evidence) and whether the "Court violated Ilse Heinemeyer's 'right' to appear pro se in a legal malpractice case on behalf of an Estate."

All these alleged questions turn on issues of state law and the various rulings of both the Trial Court and Appellate Courts below are well supported in New Jersey case law. Moreover, the rulings of the Trial Court and Appellate Courts below did not involve any issues of Federal law and/or treaties and certainly none were held invalid. Likewise, in this straightforward professional negligence case, there was no issue raised below upholding the validity of any state statute in the face of a

claimed repugnancy to a Federal Statute Treaty or Constitutional provision. Thus, to be succinct, this Court has no jurisdiction pursuant to 28 USC §1257 to grant this application.

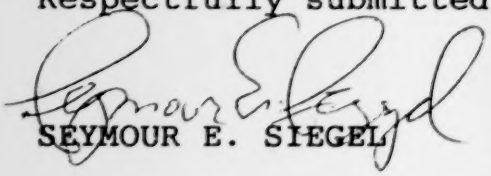
STANDING

DOES THE PETITIONER HAVE STANDING TO PROCEED WITH THIS PETITION AS SHE IS NOT ADMITTED TO ANY BAR AND IS REPRESENTING AN ESTATE OF WHICH SHE IS NOT THE SOLE BENEFICIARY?

Petitioner had no "right" to represent her late father's Estate of which she is not the only beneficiary. In fact, N.J.S.A. 2A:170-78 renders the unauthorized practice of law a disorderly persons offense. Thus, in Kashariah v. Wilentz, 93 NJ Super. 479 (App. Div. 1967) the Court held that an adminis trator ad prosequendum who was a lay person could not maintain a wrongful death action. Mrs. Heinemeyer and her sister are joint beneficiaries of their late father's estate (Heinemeyer dep. p. 6, l. 5-20). The court's analysis attempting to protect the non-litigating beneficiary from the errors of the pro se representative is particularly apt here.

It should be very clear to the court that during the trial of this case the Estate of Frank Grund was represented by counsel. However, all subsequent Appellate activity has allegedly been performed on behalf of the Estate by Mrs. Heinemeyer. To date, she has violated the very strict New Jersey Appellate Court time rules resulting in the dismissal of the appeal as untimely filed. She has also managed to incur Orders for costs at the expense of the Estate at the Trial and Appellate Court levels. For these reasons, it is abundently clear that Petitioner has no standing to bring this Application and it should be denied.

Respectfully submitted,



SEYMOUR E. SIEGEL

Supreme Court, U.S.
FILED
APR 11 1991
OFFICE OF THE CLERK

Ilse Heinemeyer,Pro Se
1380 Terrill Rd.
Scotch Plains,N.J. 07076
(908) 322-1788

SUPREME COURT OF THE
UNITED STATES
January Term 1991
No.: 90-1215

ILSE HEINEMEYER,Executrix of the Estate of Frank Grund,
Petitioner,
vs.
JOSEPH P.O'DONNELL,
Respondent.

PETITIONER'S REPLY BRIEF TO RESPONDENT's BRIEF IN OPPOSITION TO PETITIONER'S PETITION FOR WRIT OF CERTIORARI

Dated April 11,1991

PETITIONER'S REPLY BRIEF

The statements on the respondent's brief are incorrect.

The underlying case was medical malpractice, not legal as stated. The jury was charged with legal only and not to consider the underlying medical malpractice at all. Mr. O'Donnell had all my medical records and medical research records in his possession for over two and a half months. He violated not only the whole judicial system but my constitution rights, when he allowed the Court to sign an ex parte order dismissing the medical malpractice case while he had position of the file and the file was under his control, and he did not notify me until two days after the order was signed, that he was not taking the case.

The case was tried five days, not seven days.

The verdict of "No cause of action" against the attorney in the legal malpractice was entered on July 6, 1989. A Motion was filed by Petitioner "For Leave To File Notice of Appeal"on Novebmer 13, 1989. This was filed from my last moving paper with the Court below, which was October 13, 1989. Motion was denied on Jan.25,1990.

On February 8, 1990, a Motion for Reconsideration was filed, this was denied on March 1, 1990.

On page two, second paragrpah, the date was not July 1, 1990, The date was on March 20, 1990 a Petition of Certification before the N.J. Supreme Court, was filed by me, denied on July 10, 1990.

Next paragraph, the date was not November 1, 1990, Motion for Reconsideration was filed on July 23, 1990, denied by order dated October 30, 1990.

Mr. O'Donnell is responsible for all his acts and conduct for his unprofessional, unethical and outrageous conduct. The initial failure to perform his duty in reckless disregard of the consequences created the Legal malpractice case.

I was not responsible for the dismissal of the medical malpractice case, or the Trial Court handling of it. The request in the Legal malpractice complaint requested Jury of Twelve.

As for protecting the non-litigating beneficiary she has not and will not share in the legal expenses.

The Jury was prejudiced by the defendant doctors video tapes, since no rebuttal testimony with proof of evidence was heard by the Jury. One of the video's was not shown, which I specifically requested be shown.

The Ethics investigator's report stated the case was dismissed With prejudice. Mr. O'Donnell with his blatant negligence caused the medical malpractice case to be lost. Therefore, to protect Plaintiff/Petitioner's rights a legal malpractice suit was filed. In essence to protect estate since the medical malpractice case was gone.

The respondent statement "In fact, N.J.S.A. 2A:170-78 renders the unauthorized practice of law a disorderly persons offense". That is against everything the Constitution stands for. Even a prisoner who committed a criminal offense is allowed

the"unauthorized practice of law". In fact they have there own law library.

All issues raised by Petitioner are repugnant to the Constitution. Testing the rights of individuals is in the United States Supreme Court. The Fourteenth Amendment provides for equal protection. This system is set up to overturn a precedent.

Judicial enforcement of ethical obligations of attornies violated the Constitution in the circumstances presented. Proof of evidence was sent to the Attorney Ethics Office. This is well documented in my appeal process.

Respectfully submitted,

Ilse Heinemeyer

Ilse Heinemeyer,Pro Se

April 11, 1991